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SUPERIOR COURT

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES**

13 BC249705

14 CRUZ M. BUSTAMANTE, Individually, and BARBARA  
MATTHEWS, individually, and on behalf of the general  
15 public and as a representative taxpayer suit,

16 Plaintiffs,

17 v.

18 DYNEGY INC.; DYNEGY ENERGY MARKETING  
AND ORIGINATION INC.; DYNEGY MARKETING  
19 AND TRADE INC.; EL SEGUNDO POWER, L.L.C.;  
LONG BEACH GENERATION, L.L.C.; CABRILLO  
20 POWER I, L.L.C.; CABRILLO POWER II, L.L.C.;  
CHARLES L. WATSON; LOUIS J. DOREY; MATT K.  
21 SCHATZMAN; WILLIAMS ENERGY SERVICES;  
WILLIAMS ENERGY MARKETING & TRADING;  
22 KEITH BAILEY; STEVEN J. MALCOLM; WILLIAM E.  
HOBBS; MIRANT INC.; MIRANT AMERICAS  
23 ENERGY MARKETING; MIRANT CALIFORNIA;  
SOUTHERN ENERGY DELTA, L.L.C.; SOUTHERN  
24 ENERGY POTRERO, L.L.C.; A. W. DAHLBERG; S.  
MARCE FULLER; RELIANT ENERGY INC.;  
25 RELIANT ENERGY WHOLESALE GROUP; RELIANT  
ENERGY SERVICES; RELIANT ORMOND BEACH,  
26 L.L.C.; RELIANT ENERGY ETIWANTDA, L.L.C.;  
RELIANT ENERGY ELLWOOD L.L.C.; RELIANT  
27 ENERGY MANDALAY, L.L.C.; RELIANT ENERGY  
COOLWATER, L.L.C.; R. STEVE LETBETTER; JOE  
28 BOB PERKINS; SHAHID J. MALIK; DUKE ENERGY,

) CASE NO. \_\_\_\_\_  
)  
) COMPLAINT FOR  
) CALIFORNIA STATE  
) ANTITRUST VIOLATIONS,  
) UNLAWFUL, FRAUDULENT,  
) AND UNFAIR BUSINESS ACT  
) AND PRACTICES, AND FOR  
) INJUNCTIVE AND EQUITABLE  
) RELIEF UNDER BUSINESS &  
) PROFESSIONS CODE §§  
) 16726 ET. SEQ., AND  
) BUSINESS CODE §§ 172000  
) Et. SEQ.

1 DUKE ENERGY NORTH AMERICA, DUKE ENERGY  
2 TRADING AND MARKETING, LLC; DUKE ENERGY  
3 MORRO BAY, L.L.C.; DUKE ENERGY MOSS  
4 LANDING, L.L.C.; DUKE ENERGY OAKLAND, L.L.C.;  
5 DUKE ENERGY SOUTH BAY, L.L.C.; RICHARD B.  
6 PRIORY; HARVEY J. PADEWER; BRAD KARP; DOE  
7 DEFENDANTS 1 through 200, inclusive,

8 Defendants.

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I.

**SUMMARY OF THE CLAIMS**

1. This action is brought by Lieutenant Governor Cruz Bustamante and Assemblywoman Barbara Matthews as taxpayers and members of the general public on behalf of taxpayers as a representative action under CCP 526(a). Plaintiffs seek to recover damages suffered by the State of California and on behalf of the general public under Bus. & Prof. Code § 17204 against the owners and operators of California's gas-fired generation plants based on their anti-competitive, unlawful, fraudulent, and unfair business practices and business acts. Plaintiffs seek declaratory and injunctive relief directed at stopping the defendants from future antitrust or unlawful, fraudulent, and unfair business acts or practices. Plaintiffs also seek to recover damages on behalf of California's counties, cities and school districts.

2. The defendants are the five core companies and their 14 key executives who own or control 19 gas-fired electric generation plants located in the following California counties: Contra Costa, Alameda, San Francisco, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Bernardino, and San Diego. Each of the defendants acted with the anti-competitive purpose of using economic and physical withholding of electricity from the California electric generation market in order to derive monopoly profits from the sale of their electricity generation units in California.

3. The individual defendants were and are motivated to engage in the unlawful acts and practices alleged in this complaint for their personal gain. To the extent that they are able to use the unlawful means identified in this complaint, they personally profit through their stock options, personal compensation packages, and increases in the value of the stock they own in their respective companies or in the companies of their co-defendants. As a result of their unlawful actions, each of the defendants has personally profited.

4. The defendants have combined to accomplish the following in California: (1) create or carry out restrictions in trade or commerce; (2) limit or reduce the production of

1 electricity; (3) increase the price of electricity; (4) prevent competition in the making and  
2 sale of electricity; (5) control the price of electricity to the public and consumers in violation  
3 of Business & Professions Code § 16726. These same defendants have engaged in  
4 unlawful, fraudulent, and unfair business practices and acts in violation of the California  
5 Business & Professions Code § 17200.

6         5.       The defendants combination to restrict trade in electricity, limit or reduce the  
7 production of electricity, increase the price of electricity, prevent competition in the sale of  
8 electricity and their unlawful, fraudulent, and unfair business practices has caused an  
9 electricity emergency in California. On 17 January 2001, the Governor of California  
10 determined that the electricity available from California's utilities was insufficient to prevent  
11 widespread and prolonged disruption of electric service in California and proclaimed a state  
12 of emergency to exist in California under the California Emergency Services Act (the "Act").

13         6.       Under the Act the Governor has directed all agencies of the State  
14 government to utilize and employ State personnel, equipment, and facilities for the  
15 performance of any and all activities designed to prevent or alleviate the emergency. The  
16 emergency act permits the Governor to direct the expenditure of any appropriate funds  
17 legally available to perform the activities required under a proclamation.

18         7.       The Governor directed the State Department of Water Resources ("DWR") to  
19 enter into contracts and arrangements for the purchase of electric power as necessary to  
20 assist in mitigating the effects of the emergency.

21         8.       From 17 January 2001 the DWR has spent several billions of dollars  
22 purchasing electricity at fluctuating short-term and spot wholesale prices from the  
23 defendants and because of the defendants antitrust law violations, and their unlawful,  
24 fraudulent and unfair business acts and practices.

25         9.       Despite the emergency they caused in California, the defendants are  
26 continuing to operate their combination to restrict trade in electricity, limit or reduce the  
27 production of electricity, increase the price of electricity, prevent competition in the sale of  
28 electricity, and fix the prices of electricity. The defendants have also continued to engage

1 in unlawful, fraudulent, and unfair business acts and practices. They have so acted with  
2 the anti-competition intent of driving up the prices the DWR has to pay for electricity even  
3 though each of the defendants knows there is a declared electricity emergency in  
4 California. These defendants have collectively and individually intended to and in fact have  
5 profited by their unlawful and unfair acts and practices during California's declared  
6 electricity emergency. This profiteering under the declared emergency violates the public  
7 policy of the State of California.

8 10. The defendants conduct violates the public policy of the State of California  
9 which is expressed in Health & Safety Code § 396. This section provides that when a  
10 declared state of emergency results in abnormal disruptions of the market, the public  
11 interest requires that excessive and unjustified increases in the prices of essential  
12 consumer goods and services be prohibited. It is the intent of the Legislature in enacting  
13 this act to protect citizens from excessive and unjustified increases in the prices charged  
14 during or shortly after a declared state of emergency for goods and services that are vital  
15 and necessary for the health, safety, and welfare of consumers.

16 11. Plaintiffs allege that electricity is a good that is vital and necessary for the  
17 health, safety, and welfare of consumers. Plaintiffs allege that defendants are making  
18 excessive and unjustified increases in the price of electricity which is prohibited by Health &  
19 Safety Code § 396.

20 12. The State of California, through the DWR, is being forced by the defendants'  
21 unlawful actions to repeatedly purchase electricity at prices substantially above competitive  
22 levels in violation of California's competitive bidding requirements. Under these  
23 circumstances plaintiffs have the right to proceed under the California Public Contract  
24 Code § 10421.

25 13. Plaintiffs also have a right to proceed under the representative tax payer  
26 provisions of California law because the manner of such purchases work a fraud upon the  
27 people of California. The purchases are made in secret, the exact amount of public funds  
28 spent per megawatt to purchase electricity is not disclosed to the public, except in

1 aggregate amounts, yet the public has been and will be required to pay for all such  
2 purchases by the use of their public funds, higher taxes, or higher electricity rates. Under  
3 these circumstances, plaintiffs have a right to bring a representative taxpayers suit to  
4 recover damages and to enjoin present and future violations of the State of California's  
5 antitrust, unlawful, unfair, or fraudulent business acts or practices laws.

6       14. To cover the costs of such illegal charges the electric rates of the people of  
7 California were increased about 19% in January. A second increase of 46% was  
8 announced in April. Given the most recent information about the costs the defendants are  
9 imposing or causing to be imposed on the State of California, rates will have to be raised  
10 another 100% or more. Several academic and professional studies performed by both  
11 ends of the political spectrum have predicted that if corrective action is not taken  
12 permanent damage will be done to California's economy.

13       15. Over 30% of electricity costs in the California electricity markets over the last  
14 year can be attributed to the exercise of market power. This exercise of market power  
15 represents at least an additional cost for California consumers in excess of \$6.8 billion. At  
16 least 80% of these additional costs are attributable to non-emergency hours (when the ISO  
17 has not declared Stage 3 conditions). Electricity prices in the California market since  
18 January 2000 exceed the cost necessary for new investment by about 400%. The price of  
19 electricity in the California market has been significantly in excess of competitive levels  
20 over the last year, even after accounting for air emission costs and scarcity. The gap  
21 between wholesale prices and competitive levels continues to grow. The excess costs are  
22 escalating, not declining.

23       16. Unless the defendants are required to reimburse the State of California or the  
24 general public, the excessive prices caused by their unlawful conduct, and otherwise  
25 enjoined from engaging in such conduct in the future the State of California and its people  
26 will be irreparably harmed. The medical safety of thousands of Californians, the health of  
27 its children and its elderly citizens, the safety and public welfare, and the economy of the  
28 state hang in the balance.

17. It is to stop and to recover the overcharges imposed by the defendants upon the State of California and the general public that plaintiffs Lieutenant Governor Cruz Bustamante and Assemblywoman Barbara Matthews bring this action on behalf of the people of the State of California as taxpayers and on behalf of the general public.

18. The Department of Water Resources (DWR) knows the underlying facts and has failed and refused to take any action, despite the critical condition of California's economy and the threat to the public safety of the people of California. The DWR is acting under duress because the defendants will refuse to provide electricity to the State of California from the California generation plants unless California continues to pay the excessive and unlawful prices. The defendants are in essence extorting from the State of California these excessive payments for electricity produced at generation plants located in California. Any demand upon the California Department of Water Resources to bring this action will be futile, in light of the circumstances.

## 11.

## THE DEFENDANTS

19. The defendants are the following companies and individuals: The Williams Companies defendants are Williams Energy Services; Williams Energy Marketing & Trading; Keith Bailey; Steven J. Malcolm; William E. Hobbs [collectively referred to as Williams]. The Williams Companies are headquartered in Tulsa, Oklahoma. However, the Williams companies are doing business in California. Defendants Keith Bailey, Steven J. Malcolm, and William E. Hobbs and the Williams Companies purposefully avail themselves of the benefits of doing business in California. They direct the policies and activities of the companies complained of in this operative complaint.

20. Defendant Bailey is the chief executive officer of the parent company of defendants Williams Energy Services and William Energy Marketing & Trading. Defendant Bailey regularly participates in and exercises direct and indirect control over the activities of Williams Energy Services and Williams Energy Marketing & Trading. Bailey has been present in the State of California and participated in actions complained of in the State of

1 California.

2 21. Steven J. Malcolm is the chief executive officer of Williams Energy Services,  
3 which is a parent company of Williams Energy Marketing and Trading. Defendant Malcolm  
4 regularly participates in and exercises direct and indirect control over the activities of  
5 Williams Energy Services directed at California and complained of in this operative  
6 complaint.

7 22. William E. Hobbs is the chief executive officer of Williams Energy Marketing  
8 and Trading. He regularly participates in the activities that are directed at the State of  
9 California which are the subject matter of this action. Williams Energy Marketing and  
10 Trading operates through a 21,000 square foot trading floor, which employs 500  
11 employees. The Williams trading floor, working with the trading floors operated by  
12 Southern [Mirant], Reliant, Duke and Dynegy, is one of the principal tools the defendants  
13 use to inflate the price of electricity within their respective markets, as well as throughout  
14 the State of California.

15 23. The Southern Energy and Mirant defendants are Mirant Inc.; Mirant Americas  
16 Energy Marketing; Mirant California; Southern Energy Delta, L.L.C.; Southern Energy  
17 Potrero, L.L.C.; A. W. Dahlberg; S. Marce Fuller, [collectively referred to as Mirant or  
18 Southern].

19 24. The Southern companies are headquartered in Atlanta, Georgia. However,  
20 Mirant is doing business in California. Defendants A.W. Dahlberg, and S. Marce Fuller,  
21 and the Southern Companies purposefully avail themselves of the benefits of doing  
22 business in California. They direct the policies and activities of the companies complained  
23 of in this operative complaint.

24 25. Defendant Dahlberg was the chief executive officer of Mirant's parent  
25 company, the Southern Company, and remains an active member of Mirant's board of  
26 directors. He serves on the nominating committee. He was the principal architect of  
27 Mirant's business plan. Defendant Dahlberg regularly participates in and exercises direct  
28 and indirect control over the activities of Mirant.



1           26.     S. Marce Fuller is the chief executive officer of Mirant. Ms. Fuller regularly  
2 participates in and exercises direct and indirect control over the activities of Mirant directed  
3 at California and complained of in this operative complaint.

4           27.     Mirant operates through a trading floor, which employs several hundred  
5 employees. The Mirant trading floor, working with the trading floors operated by Williams,  
6 Reliant, Duke and Dynegy, is one of the principal tools the defendants use to inflate the  
7 price of electricity within their respective markets, as well as throughout the State of  
8 California.

9           28.     The Reliant defendants are Reliant Energy Inc.; Reliant Energy Wholesale  
10 Group; Reliant Energy Services; Reliant Ormond Beach, L.L.C.; Reliant Energy Etiwantda,  
11 L.L.C.; Reliant Energy Ellwood L.L.C.; Reliant Energy Mandalay, L.L.C.; Reliant Energy  
12 Coolwater, L.L.C.; R. Steve Letbetter; Joe Bob Perkins; Shahid J. Malik, [collectively  
13 referred to as Reliant]. Reliant is headquartered in Houston, Texas. However, Reliant is  
14 doing business in California. Defendants R. Steve Letbetter, Joe Bob Perkins, and Shahid  
15 J. Malik, and the Reliant defendants purposefully avail themselves of the benefits of doing  
16 business in California. They direct the policies and activities of the companies complained  
17 of in this operative complaint.

18           29.     Defendant R. Steve Letbetter is the chief executive officer of Reliant Energy.  
19 Defendant Letbetter regularly participates in and exercises direct and indirect control over  
20 the activities of Reliant Energy, Reliant Energy Wholesale Group and their affiliated  
21 companies.

22           30.     Defendant Joe Bob Perkins is an executive officer of Reliant Energy  
23 Wholesale Group. Defendant Perkins regularly participates in and exercises direct and  
24 indirect control over the activities of Reliant Energy Wholesale Group and their affiliated  
25 companies directed at California and complained of in this operative complaint.

26           31.     Defendant Shahid J. Malik is the chief executive officer of Reliant Energy  
27 Services which operates Reliant's trading floor. Defendant Malik regularly participates in  
28 the activities that are directed at the State of California which are the subject matter of this

1 action. Reliant Energy Services operates through a trading floor that employs several  
2 hundred people. The Reliant trading floor, working with the trading floors operated by  
3 Williams, Southern [Mirant], Duke and Dynegy, is one of the principal tools the defendants  
4 use to inflate the price of electricity within their respective markets, as well as throughout  
5 the State of California.

6 32. The Duke Energy defendants are Duke Energy; Duke Energy North America,  
7 Duke Energy Trading and Marketing, L.L.C.; Duke Energy Morro Bay, L.L.C.; Duke Energy  
8 Moss Landing, L.L.C.; Duke Energy Oakland, L.L.C.; Duke Energy South Bay, L.L.C.;  
9 Richard B. Priory; Harvey J. Padewer; Brad Karp, [collectively referred to as Duke].

10 33. Duke Energy is headquartered in Houston, Texas. However, Duke Energy is  
11 doing business in California. Defendants Richard B. Priory, Harvey J. Padewer, and Brad  
12 Karp and Duke Energy and its affiliates purposefully avail themselves of the benefits of  
13 doing business in California. They direct the policies and activities of the companies  
14 complained of in this operative complaint.

15 34. Defendant Richard B. Priory is the chief executive officer of Duke Energy.  
16 Defendant Priory regularly participates in and exercises direct and indirect control over the  
17 activities of Duke Energy, Duke Energy Services, and Duke Energy Marketing and Trading  
18 and their affiliated companies.

19 35. Defendant Harvey J. Padewer is a Group President of Duke Energy Services.  
20 Defendant Padewer and Duke Energy regularly participates in and exercises direct and  
21 indirect control over the activities of Duke Energy Services and their affiliated companies  
22 directed at California and complained of in this operative complaint.

23 36. Defendant Brad Karp is an executive officer of Duke Energy Marketing and  
24 Trading which operates Duke Energy's trading floor. Defendant Karp regularly participates  
25 in the activities that are directed at the State of California which are the subject matter of  
26 this action. Duke Energy Marketing and Trading operates through a trading floor that  
27 employs several hundred people. The Duke Energy trading floor, working with the trading  
28 floors operated by Williams, Southern [Mirant], Reliant, and Dynegy, is one of the principal

1 tools the defendants use to inflate the price of electricity within their respective markets, as  
2 well as throughout the State of California.

3 37. The Dynegy defendants are Dynegy Inc.; Dynegy Energy Marketing and  
4 Origination Inc.; Dynegy Marketing and Trade Inc.; El Segundo Power, L.L.C.; Long Beach  
5 Generation, L.L.C.; Cabrillo Power I, L.L.C.; Cabrillo Power II, L.L.C.; Charles L. Watson;  
6 Louis J. Dorey; Matt K. Schatzman [collectively referred to as Dynegy]. Dynegy is  
7 headquartered in Houston, Texas. However, Dynegy is doing business in California.

8 38. Defendants Charles L. Watson, Louis J. Dorey, and Matt K. Schatzman,  
9 Dynegy and its affiliated companies purposefully avail themselves of the benefits of doing  
10 business in California. They direct the policies and activities of the companies complained  
11 of in this operative complaint.

12 39. Defendant Charles L. Watson is the chief executive officer of Dynegy.  
13 Defendant Watson regularly participates in and exercises direct and indirect control over  
14 the activities of Dynegy, Dynegy Energy Marketing and Origination, Dynegy Marketing and  
15 Trade, and their affiliated companies.

16 40. Defendant Louis J. Dorey is the chief executive officer of Dynegy Energy  
17 Marketing and Origination. Defendant Dorey regularly participates in and exercises direct  
18 and indirect control over the activities of Dynegy Energy Marketing and Origination and  
19 their affiliated companies directed at California and complained of in this operative  
20 complaint.

21 41. Defendant Matt K. Schatzman is an executive officer of Dynegy Marketing  
22 and Trade, which operates Dynegy's trading floor. Defendant Schatzman regularly  
23 participates in the activities that are directed at the State of California which are the subject  
24 matter of this action. Dynegy Marketing and Trade operates through a trading floor that  
25 employs several hundred people. The Dynegy trading floor, working with the trading floors  
26 operated by Williams, Southern [Mirant], Reliant, and Duke Energy is one of the principal  
27 tools the defendants use to inflate the price of electricity within their respective markets, as  
28 well as throughout the State of California.

1           42.    The DOE Defendants 1 through 200, inclusive, include traders, sales persons  
2 and other officers, agents and employees of the Dynegy, Mirant, Reliant Energy Southern  
3 Energy, Duke defendants, and others who knowingly or recklessly participated in the  
4 alleged wrongdoing and unlawful conduct. Plaintiffs are ignorant of the names, capacities,  
5 or corporate identities at this time.

6           43.    In order to coordinate such sales, DWR held workshops in California and the  
7 authorized agents of the defendants attended these workshops in California.. Among those  
8 attending the workshops in California were the following representatives of the defendants:

9                   (i)    W. Kent Palmerton, Director, Regional Government Affairs and Doug  
10                   Ferber, Director of Williams Energy.

11                   (ii)   Bobby Campo, Director, Mirant Americas and Jim Shandalov, also  
12                   from Mirant.

13                   (iii)   Dave Schultz, a Reliant Energy Manager.

14                   (iv)   Carolyn A. Baker, Duke's attorney director of regulatory affairs  
15                   California's operations.

16                   (v)   Franklin F. Eckhart Jr., Senior Director of Dynegy.

17           44.    The Court has jurisdiction over all causes of action asserted herein pursuant  
18 to the California Constitution, Article VI, §10. This Court also has jurisdiction in that  
19 plaintiffs' claims are brought pursuant to the Cartwright Act (Business & Professions Code  
20 §§16720, et seq.) and the California Unfair Competition Laws (Business & Professions  
21 Code §§17200, et seq.). Each defendant has sufficient minimum contacts in California, is  
22 a citizen of California, or otherwise intentionally avails itself of the California market either  
23 through the distribution, sale or trade of energy in the State of California or by having a  
24 facility located in California so as to render the exercise of jurisdiction over it by the  
25 California courts consistent with traditional notions of fair play and substantial justice. The  
26 defendants are all doing business in the State of California, have received and continue to  
27 receive substantial compensation and profits from the sale of energy in the County of Los  
28 Angeles in the State of California. At all times relevant herein, acts and conduct in

1 furtherance of the wrongful conduct alleged herein occurred in the State of California.

2 45. Venue in this county is proper pursuant to Business & Professions Code  
3 §16750(a) and 17203 because this court is a court of competent jurisdiction, numerous  
4 members of the general public reside in the County, defendants conduct substantial  
5 business in this county and/or defendants' liability arose in part in this County, and the acts  
6 upon which this action is based occurred in or were intended to have an impact, and, in  
7 fact, had an impact in Los Angeles County. Venue in this case is also based upon  
8 California Code of Civil Procedure § 395 in that the conduct of defendants which forms the  
9 basis of this action occurred in the County of Los Angeles and at least one of the  
10 defendants has its principal place of business in the County of Los Angeles.

11 **III.**

12 **NATURE OF ACTION**

13 46. Plaintiffs bring this action as taxpayers under Code of Civil Procedure §  
14 526(a), Public Contract Code 10421, and related California law and on behalf of the  
15 general public under Business & Professions Code § 17204. Any demand upon the  
16 Department of Water Resources would be futile since the Department of Water Resources  
17 is fully aware of the underlying wrongful conduct and has failed to take action to stop the  
18 waste and public gift of funds.

19 47. Plaintiffs are bringing this action under the Business & Professions §§ 16700-  
20 16770 and for damages and equitable relief for injuries sustained as a result of  
21 defendants' antitrust, unlawful, fraudulent, and unfair business practices and acts involving  
22 defendants sale of electricity in the California electricity market. They are also bringing this  
23 action as a representative taxpayers suit and as otherwise alleged in this complaint.

24 **IV.**

25 **BACKGROUND OF PLAINTIFFS CAUSES OF ACTION**

26 48. This action is brought against the five core defendant companies: Williams,  
27 Southern [Mirant], Reliant, Duke and Dynegy to recover overcharges imposed on the  
28 California Department of Water Resources, which has been compelled to purchase

1 electricity from the defendants after the defendants' anti-competitive, unlawful and unfair  
2 business practices and acts rendered California's two largest public utilities insolvent.

3 49. Until 1998 electricity prices in California were set by regulation under the  
4 California Public Utilities Commission [PUC]. Based upon false representations of lower  
5 rates made to the PUC and the California Legislature, California switched from a system in  
6 which electricity prices were determined by regulation to one in which prices were  
7 supposed to be set by competition.

8 50. Under the deregulated system California created a California generation  
9 market in which the price of electricity was supposed to be set by competition. The five  
10 defendants: Williams, Southern [Mirant], Reliant, Duke and Dynegy, owned or controlled 19  
11 electricity gas-fired generation plants that set the price of electricity when demand  
12 exceeded 20,000 MW.

13 51. Directly or indirectly Williams, Southern [Mirant], Reliant, Duke and Dynegy  
14 through their lobbyists and their organization, the Independent Energy Producers,  
15 Association played a critical role in organizing the California electric generation market  
16 under deregulation. They collectively supported a Memorandum of Understanding  
17 amongst themselves and others, which became the basis of the PUC's deregulation  
18 charter, known as the Preferred Policy Decision. The PUC issued the Preferred Policy  
19 Decision in December 1995, which provided the blueprint for California's new electric  
20 generation "competitive" system.

21 52. Under deregulation, California consumers were charged or will be charged  
22 prices for electricity that increased from \$5 billion in 1998 to \$7 billion in 1999, to \$28 billion  
23 in 2000 to a projected \$70 billion in 2001. These price increases were in substantial part  
24 the direct and proximate result of the defendants' antitrust and unlawful, fraudulent, and  
25 unfair business practices.

26 53. Defendants Williams, Southern [Mirant], Reliant, Duke and Dynegy combined  
27 to restrict trade in electricity, to limit production of electricity, and to prevent competition in  
28 the sale of electricity. Each of these defendants engaged in unlawful, fraudulent, and unfair

1 business practices and acts in connection with the production and sale of electricity.  
2 These defendants so acted with the intent of driving up the costs of electricity above  
3 competitive prices.

4 54. The five key players are Williams, Southern Energy [Mirant] Reliant Energy,  
5 Duke Energy and Dynegy. Williams, Southern Energy [Mirant], Reliant Energy, Duke  
6 Energy, and Dynegy targeted, captured, and used 17,284 MW of electric generation in  
7 California to control the state's electricity prices, when demand exceeded 20,000 MW.<sup>1</sup>  
8 Each of these defendants owned or controlled about 20% of California's price setting  
9 generation capacity. Williams, Southern [Mirant], Reliant, Duke and Dynegy intended to  
10 use the market power their generators provided to them in order to raise prices by  
11 restricting output.

12 55. Under its Preferred Policy Decision, the PUC proposed that California's  
13 utilities dispose of 50% of their gas-fired non-reliability must-run units. Southern California  
14 Edison [SCE], PG&E and SDG&E began to sell their generation units in 1998. The utilities  
15 elected to sell 19 of their gas-fired electric generation plants, including their reliability must-  
16 run units. PG&E and SDG&E retained Morgan Stanley investment bankers to act as their  
17 financial advisers in connection with the sales of their power plants. SCE retained New  
18 Harbor Inc.

19 56. Morgan Stanley, and New Harbor prepared sales brochures for power plants  
20 that PG&E, SDG&E and SCE intended to sell. The sales process took place between  
21 August 1997 and April 1999. Most of the power plants were sold to Williams, Southern  
22 [Mirant], Reliant, Duke and Dynegy by May 1998. The buy out began on 5 August 1997  
23 when SCE, through New Harbor Inc., circulated its confidential memorandum of soliciting  
24 "indications of interest" from potential buyers. PG&E, through Morgan Stanley, issued its  
25 sales solicitation on 8 September 1997.

26 57. Williams, Southern [Mirant], Reliant, Duke and Dynegy's purchase of the gas-  
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28 <sup>1</sup> Dynegy disposed of 370 MW of gas fired generation to EL Paso 7 December  
1999.

1 fired units was carried out in eight stages over a 17-month period, for a total purchase price  
2 of just under \$3 billion:

3 (1) 18 November 1997: Duke Energy took over gas-fired generation in Alameda  
4 County, Monterey County, and San Luis Obispo County when it bought three plants  
5 with 2,645 MW of capacity.<sup>2</sup>

6 (2) 24 November 1997: AES [Williams] took over gas-fired generation in the heart of  
7 the Los Angeles basin, when it purchased three plants, with 3954 MW.

8 (3) 24 November 1997 Houston Industries [Reliant] took over gas-fired generation in  
9 Los Angeles [three plants] and Barstow [one plant], with a total of 2,276 MW of  
10 capacity.<sup>3</sup>

11 (4) 24 November 1997: Destec [Dynergy] and NRG Energy Inc., took over another  
12 portion of generation in the Los Angeles when it acquired one plant with 1,020 MW  
13 of capacity.<sup>4</sup>

14 (5) 4 February 1998 NGC [Dynergy] and NRG Energy Inc. took over generation in  
15 another portion of the LA Basin, when it purchased the Long Beach plant, with 530  
16 MW of capacity.<sup>5</sup>

17 (6) 25 March 1998: Houston Industries [Reliant Energy] took over generation in  
18 Oxnard, when it bought the Ormond Beach Generating Station.<sup>6</sup>

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20 <sup>2</sup> Duke Energy Morro Bay L.L.C. bought the Morro Bay plant; Duke Energy Moss  
21 Landing L.L.C. bought the Moss Landing plant; Duke Energy Oakland L.L.C. bought the  
22 Oakland plant.

23 <sup>3</sup> Reliant Energy Etiwanda L.L.C. bought the Etiwanda plant; Reliant Energy  
24 Ellwood, L.L.C. bought the Ellwood plant; Reliant Energy Mandalay, L.L.C. bought the  
25 Mandalay plant, and Reliant Energy Coolwater, L.L.C. bought the Coolwater plant.

26 <sup>4</sup> Dynergy's El Segundo Power, L.L.C. purchased the El Segundo plant from SCE.

27 <sup>5</sup> Dynergy's Long Beach Generation L.L.C. purchased the Long Beach plant from  
28 SCE.

<sup>6</sup> Reliant Ormond Beach, L.L.C. purchased the Ormond Beach plant from SCE.



(7) 14 December 1998: Dynegy took over generation in San Diego County, when it purchased the Encina power plant with 1218 MW, and 17 combustion turbines in seven sites throughout the San Diego region, with 253 MW.<sup>7</sup>

(8) 11 January 1999: Duke Energy took over generation in South San Diego County, when it purchased the South Bay Power Plant, with 706 MW of capacity.

(9) 16 April 1999: Southern took over generation in the San Francisco Bay Area, when it purchased two power plants from PG&E in Contra Costa, and one in San Francisco.<sup>8</sup>

58. The following chart identifies each power plant, the county it is located in and the corporate purchaser:

No	County	Power Plants	Owner
1	Contra Costa	Contra Costa power plant	Southern Energy Delta, L.L.C.
2	Contra Costa	Pittsburg power plant	Southern Energy Delta, L.L.C.
3	Alameda	Oakland power plant	Duke Energy Oakland L.L.C.
4	San Francisco	Potrero power plant	Southern Energy Potrero, L.L.C.
5	Monterey	Moss Landing power plant	Duke Energy Moss Landing, L.L.C.
6	San Luis Obispo	Morrow Bay power plant	Duke Energy Morro Bay L.L.C.
7	Santa Barbara	Ellwood power plant	Ellwood Energy L.L.C.
8	Ventura County	Mandalay power plant	Reliant Energy Mandalay, L.L.C.
9	Ventura County	Ormond Beach power plant	Reliant Energy Ormond Beach, L.L.C.

<sup>7</sup> Dynegy's Cabrillo Power I and Cabrillo Power II purchased the Encina and 17 combustion plants.

<sup>8</sup> Southern Energy Delta, L.L.C. purchased the Contra Costa and Pittsburg plants, and Southern Energy Potrero, L.L.C. purchased the Potrero plant.

10	Los Angeles	Redondo Beach plant	AES Redondo Beach L.L.C. <sup>9</sup>
11	Los Angeles	Long Beach power plant	Long Beach Generation L.L.C.
12	Los Angeles	El Segundo power plant	El Segundo Power L.L.C.
13	Los Angeles	Alamitos power plant	AES Alamitos L.L.C. <sup>10</sup>
14	San Bernardino	Etiwanda power plant	Reliant Energy Etiwanda, L.L.C.
15	San Bernardino	Cool Water power plant	Reliant Energy Coolwater, L.L.C.
16	Orange County	Huntington Beach power plant	AES Huntington Beach, L.L.C. <sup>11</sup>
17	San Diego	Encina	Cabrillo Power I L.L.C.
18	San Diego	17 Combustion generators	Cabrillo Power II L.L.C.
19	San Diego	South Bay power plant	Duke Energy South Bay L.L.C.

59. The sales brochures used to sell these power plants stressed their market power or monopoly attributes. Market power consists of a seller having power over price. The seller with market power can increase its revenues because its customers continue to buy its product despite higher prices. Under these circumstances there is a high inelasticity of demand for the product. The sales brochures used to sell the power plants stressed the factors showing a very high inelasticity of demand for the electricity within the relevant market.

60. The approximately 17,000 MW targeted and captured by the defendants made them the most relevant generating companies because it gave them ownership or

<sup>9</sup> The generation output from these plants have been assigned to Williams Energy & Marketing under long term tolling agreements.

<sup>10</sup> The generation output from these plants have been assigned to Williams Energy & Marketing under long-term tolling agreements.

<sup>11</sup> The generation output from these plants have been assigned to Williams Energy & Marketing under long-term tolling agreements.

1 control of the gas-fired units. The gas-fired units play a crucial role since they provide  
2 about 17,000 MW of gas-fired capacity, which comes into play as demand rises above the  
3 level that can be met by base load units of California's utilities. The first 20,000 megawatts  
4 of demand are roughly covered by generation under the control of California's three  
5 utilities.

6 61. While the power to set California's electricity prices was being sold off to  
7 Williams, Southern [Mirant], Reliant, Duke and Dynegy, each of these companies as well  
8 as PG&E, SCE and SDG&E continued to reassure consumers that electricity rates would  
9 be going down. The following PG&E-issued statement is representative of the message  
10 the defendants intended to send and did send to the California public:

11 In January 1998, each of the utility's residential and small business  
12 customers got a 10 percent reduction in the rates they pay for electricity.  
13 Deregulation will save these utility customers, in aggregate, about \$400  
14 million this year alone.

15 Some adversaries seek to confuse customers about whether the reduction is  
16 real, how it was financed, and if it will stay. But at the end of the day,  
17 electricity rates are down 10 percent from where they were a year ago. And  
18 they are going to stay down for several years, and then they go down again.

19 With inflation at 3 percent, by the year 2001, electricity rates for this group of  
20 customers in real terms, will be about 20 percent lower than they are today.

21 There is no product bought on a daily basis that has such a predictable  
22 downward price trajectory into the future. None.<sup>12</sup>

23 62. The California electric generation market created under deregulation  
24 consisted of three geographically insular areas. The heart of these markets was formed by  
25 the structure of the electric transmission system, natural boundaries, and location of the  
26 power plants. At the heart of the market structure were the 19 gas-fired power plants that  
27

28 <sup>12</sup> PG&E issued similar remarks on 24 October 1997, 9 December 1997, and 21  
April 1999.

1 had been built and operated by California's three utilities. These markets consisted of  
2 those areas within which the California public utilities historically operated:

3 (1) **Northern California Market (the PGE Area)**: went to Contra Costa, San  
4 Francisco, Monterey, San Luis Obispo-went to Duke and Southern;

5 (2) **Southern California (the SCE Area)**: went to Santa Barbara, Ventura, Los  
6 Angeles, Orange County, Riverside County, and San Bernadino County-went to  
7 Reliant, Williams and Dynegey; and

8 (3) **San Diego County the (SDG&E Area)**: went to Dynegey and Duke.

9 63. Williams, Southern [Mirant], Reliant, Duke and Dynegey's business plans were  
10 directed at controlling electric generation plants strategically located in the California  
11 markets that would allow these defendants to exercise market power over electric prices in  
12 those markets. The highly confidential documents directed at prospective buyers of the  
13 plants stressed the plants market power attributes. These writings were created by SCE,  
14 PG&E and SDG&E, and their respective financial advisers, New Harbor and Morgan  
15 Stanley. For example, the Morgan Stanley sales brochure for the Encina and South Bay  
16 power plants provided as follows:

17 The Generation Assets are strategically located in the San Diego Basin.  
18 Load in this area has increased at an average annualized rate of 2.1 percent  
19 from 1991 through 1996, and is projected to grow at an average annual rate  
20 of 2.0 percent from 1996 through 2001. The San Diego basin relies primarily  
21 on imports and existing internal generation to meet its load demand. Current  
22 transmission capacity for importing electricity into the San Diego Basin is  
23 nearing full utilization. Accordingly, in order to meet load and to ensure  
24 reliability, generation resources located in the San Diego Basin will become  
25 increasingly important.

26 64. The Bay Area is a "transmission constrained" area because when generation  
27 within the area is insufficient to serve local load, there may not be sufficient transmission  
28 capacity to enable imports into the area to make up the supply deficiency. The Bay Area

1 load limit is 8750 MW. This means that when all generation within the area is operational  
2 and all transmission lines connecting the area to the remainder of the ISO control grid are  
3 fully available, 8750 MW of load can be served reliably.

4 65. Defendants Duke and Southern exploited this transmission congestion, which  
5 provided them local area market power in order to raise prices by withholding or by causing  
6 congestion of the transmission lines.

7 66. Once Williams, Southern [Mirant], Reliant, Duke and Dyngey acquired control  
8 of the 19 power plants they combined to (1) create and carry out restrictions in trade of  
9 electricity in their respective markets; (2) limit or reduce the production of electricity in their  
10 respective markets; (3) prevent competition in the selling of electricity in their respective  
11 markets; and (4) control the price of electricity in their respective markets. All of this was in  
12 violation of Business & Professions Code § 16726. They also engaged in unlawful,  
13 fraudulent, and unfair business practices in connection with their use of those plants in  
14 violation of Business and Professions Code § 17200.

15 67. In connection with the purchase, or after they acquired control of the 19  
16 power plants, Williams, Southern [Mirant], Reliant, Duke and Dyngey engaged in unlawful,  
17 fraudulent, and unfair business practices. These defendants falsely represented to the  
18 public that they intended to create a competitive marketplace that would benefit consumers  
19 with lower prices. These defendants engaged in trading of electricity futures, forwards,  
20 options, and other risk products that had the effect of manipulating and inflating the price of  
21 electricity within their respective markets. These defendants engaged in both economic  
22 and physical withholding of electricity which involved the exercise of significant market  
23 power with the objective and result of inflating the price of electricity within their respective  
24 markets. These defendants engaged in "megawatt laundering," in which they made trades  
25 with the primary purpose of inflating the costs of electricity within their respective markets.

26 68. R. Steve Letbetter, CEO of Reliant Energy, outlined Williams, Southern  
27 [Mirant], Reliant, Duke and Dynegy's motive and business plan to raise electricity prices in  
28 California. In a 10 February 2000 presentation to an energy executives insider group,

1 Cambridge Energy Association, Letbetter talked of the "gap between the performance of  
2 electric utility stocks and that of the broader market is a concern to all of us on this panel  
3 and to many people in this room." Letbetter admitted "I know we've all given a lot of  
4 thought to what it will take to improve valuations." He continued:

5 We feel that we're doing all the right things; we've transformed our  
6 companies to compete in the new businesses that didn't exist a few years ago  
7 and even in some businesses that exist only in our imaginations today. And  
8 we're scratching our heads because, although our companies look a lot  
9 different than they used to, our stocks stubbornly persist in behaving like  
10 utilities.

11 \* \* \*

12 As an industry, we sometimes have had a rather spotty performance record  
13 and a history of unkept promises.

14 69. Letbetter went on to lay out his solution to the "performance gap:" We must  
15 deliver near-term earnings and begin to produce greater earnings growth than we did in the  
16 past." He declared that this is "the only way we can expect our stocks to stop behaving like  
17 utilities and catch up with the transformation that many of our companies already have  
18 undergone."

19 70. Letbetter explained why Williams, Southern [Mirant], Reliant, Duke and  
20 Dynegy had reorganized themselves to be "integrated energy services companies:"

21 Integrated energy services companies operating in competitive markets aren't  
22 like regulated utilities, and they will appeal to a different type of investor.

23 Investors are sending a clear signal that they would prefer to invest in pure  
24 plays.<sup>13</sup> Reliant, for example, has built a substantial unregulated wholesale  
25

26 <sup>13</sup> The term "Pure Play" is "stock market jargon for a company that is virtually  
27 devoted to one line of business. An investor who wants to invest in that line of business looks  
28 for such a pure play. For instance, General Dynamics may be considered a pure play in the  
defense business, or Weyerhaeuser in the forest products business. The opposite of a pure  
play is a widely diversified company." *Dictionary of Finance and Investment Terms*. Williams,  
Southern [Mirant], Reliant, Duke and Dynegy are moving towards pure plays energy

1 business including a top-tier power generation business that will have over  
2 20,000 megawatts in operation by 2002.

3 71. Letbetter told his fellow energy executives that if they were to gain the pure  
4 play investors' "confidence in our ability to expand and operate in competitive markets, we  
5 must be able to demonstrate that our strategic investments are adding value and we must  
6 choose investments that will produce earnings accretion quickly."

7 Letbetter then admitted that Reliant Energy's strategy would be to obtain significant  
8 market share in targeted regions like California and then extract higher prices:

9 Our energy services strategy is to build a significant market presence in  
10 power generation in multiple regions of the country and then extract  
11 additional value of those assets through our trading and marketing  
12 operations. [10 February 2000 Remarks by R. Steve Letbetter before the  
13 Cambridge Energy Research Associates]

14 72. Reliant and its co-defendants strategy was to aggressively take advantage of  
15 these shortages by taking control of existing or new generation in those areas. Reliant  
16 admitted that its objective was to "*Target strategic asset portfolios in our regional markets:*"

17  
18 We target strategic portfolios of base-load, intermediate and peaking  
19 generation facilities and power contracts in each of our regional markets  
20 based on prevailing supply and demand fundamentals in order to be able to  
21 meet the full electricity requirements of customers. (emphasis original)  
22

23 73. Defendant Dahlberg admitted to Southern shareholders on 26 May 1999 in a  
24 news release that the "landscape of the future energy business will be dominated by a few  
25 companies." He admitted "there will be about a half-dozen national energy providers.  
26 Southern Company intends to be one of those companies."

27 \_\_\_\_\_  
28 companies that combine gas and electricity and related energy products as a platform for  
trading and creation of additional financial and risk based products, all within an unregulated  
domain.

1           74. Williams, Southern [Mirant], Reliant, Duke and Dynegy followed the plan, as  
2 detailed in the Letbetter CERA remarks to extract more money out of strategic generation.  
3 CERA performed a multi-client study and reported that power plants up for sale in  
4 California would provide purchasers with market power because there were potential  
5 shortages in California's electric energy market.

6           75. Defendant Williams signed a tolling agreement with AES and thereby became  
7 the second largest power provider in the Los Angeles Basin." Williams systematically  
8 exercised market power using the Alamitos, Huntington Beach and Redondo power plants.

9  
10           76. The Southern defendants built and acquired a portfolio of power-generating  
11 assets that made them "one of the world's largest independent power producers." The  
12 Southern defendants used their technical skills and combination with their co-defendants  
13 "in the acquisition, development, financing and operation of power generation facilities and  
14 gas transportation and storage assets." The Southern defendants systematically exercised  
15 their market power, in combination with their co-defendants to raise prices and restrict  
16 output.

17           77. Defendant Duke built itself into "an integrated energy and energy services  
18 provider." Its "business strategy was to develop integrated energy infrastructures in  
19 targeted regions ... " Duke was "one of the master architects in the new energy economy"  
20 it built or acquired "energy platforms" in "target markets." Duke, also in combination with its  
21 co-defendants used its market power to systematically raise electric prices in its market  
22 areas and throughout the State of California.

23           78. Defendant Dynegy's business strategy was and is to "expand ownership or  
24 control of merchant generation capacity in select markets across the country." Dynegy  
25 believes that merchant generation capacity, which is designed principally to supply power  
26 to markets during periods of peak demand, offers the greatest flexibility in executing its  
27 strategy of an integrated gas and power marketing and power generation business."  
28 Dynegy in combination with its co-defendants, exercised the market power its strategic



1 generation provided to Dynegy to raise electricity prices and restrain output.

2 79. The Williams, Southern [Mirant], Reliant, Duke and Dynegy defendants  
3 delivered a fraudulent and false message to the public about their intent to create a  
4 competitive electric market in California. While they were telling the California public they  
5 intended to and were helping to create a competitive market for electricity in California that  
6 would lower electricity prices, they delivered a different message to their investment  
7 bankers. These defendants told their investment bankers, who were helping Williams,  
8 Southern [Mirant], Reliant, Duke and Dynegy, that prices would be increased because the  
9 defendants would be able to exercise market prices in the California markets and thereby  
10 raise electricity prices charged to California consumers.

11 80. Williams, Southern [Mirant], Reliant, Duke and Dynegy told their investment  
12 bankers that once they captured the 17,000 MW of gas-fired power plants in California,  
13 they would use their power to raise electricity prices in California and thereby raise rates.<sup>14</sup>

14 81. On 17 January and 19 January 2001, Williams announced its most recent  
15 public offering, 37 million shares of common stock at \$36.12 per share for a total of \$1.3  
16 billion. In the prospectus for this offering, Williams acknowledges, but does not deny that:  
17 "Allegations have also been made that the wholesale price increase resulted from the  
18 exercise of market power and collusion of the power generators and sellers, such as  
19 WEMT." [Williams Energy Marketing and Trading]

20 82. On 3 October 2000, Southern Company and Southern Energy announced the  
21 closing of the initial public offering of Southern Energy [Mirant]. More than 66.7 million  
22 shares were sold along with a concurrent securities offering raising over \$1.81 billion. Both  
23 offerings were jointly led by Goldman, Sachs and Morgan Stanley Dean Witter.

24 83. On 20 October 1998 Reliant Energy [Houston Industries ] announced it had  
25 completed \$165 million in financing of the El Dorado Energy plant, a 492-megawatt, natural  
26

27 <sup>14</sup> It appears that the attitude of California's utilities was that higher prices would  
28 bring them more income for the generation they retained, and they could pass on higher rates  
to consumers. Our utilities also benefitted from prospective increases in prices by receiving  
higher sales prices for their generation units.

1 gas-fired power plant located in Boulder City, Nevada. Reliant Energy's Joe Bob Perkins  
2 admitted that the financing was based solely on "compelling market economics." On 17  
3 October 2000, Reliant announced its wholly owned subsidiary, Reliant Resources, was  
4 issuing an initial public offering. Reliant Resources proposed to sell up to 60 million shares  
5 of common stock.

6 84. On 10 November 1999, Duke Energy of North America announced  
7 arrangements with three financial institutions to finance DENA's purchase of three power  
8 stations, Moss Landing, Morro Bay and Chula Vista. On 8 July 1999, Dynegy announced  
9 the completion of \$362.5 million in limited-recourse financing related to Dynegy's purchase  
10 of the El Segundo, Long Beach and Encina power plants. On 2 October 2000, Dynegy  
11 announced its intent to sell 10 million shares of its common stock. The shares are to be  
12 sold through Goldman, Sachs.

13 85. The core of the alleged unlawful behavior is centered in massive, constant,  
14 and unregulated trading that defendants Williams, Southern, Reliant, Duke and Dynegy  
15 sponsored.

16 86. Defendant Williams Energy Marketing & Trading boasts of its "21,000 square-  
17 foot energy trading floor is one of the largest of its kind in the United States, and handles  
18 approximately \$75 billion in energy transactions per year," all of which is unregulated. The  
19 floor has two 70-foot proprietary data walls, a 21-foot full motion video wall, and two 30 foot  
20 data walls containing futures information.

21 87. Southern has also admitted to the importance of their trading operations to  
22 their profitability, "When we began to operate beyond our traditional businesses in the  
23 Southeast, we knew it would be important to link our newly acquired power plants to a  
24 vigorous trading and marketing operation," according to A.W. "Bill" Dahlberg, chairman and  
25 chief executive officer of Southern Company. Southern has also devoted major assets to  
26 its trading floor operation:

27 The trading floor, staffed by some of the nation's top energy traders and  
28 marketers, is a clearinghouse for transactions involving electricity, natural

1 gas, coal and oil. These traders and marketers, backed by teams of experts  
2 in mathematics, physics, economics, meteorology and other disciplines, also  
3 essentially trade in risk, hedging against events that can impact the value of  
4 energy commodities-their environmental costs or the weather, for example.

5 The trading floor is operated by Southern Company Energy Marketing, a joint  
6 venture of Southern Company subsidiary Southern Energy Inc. and Vastar  
7 Resources Inc. \*\*\* 'Its important to link assets to energy trading. Assets like  
8 power plants are most profitable when used efficiently, with a complete  
9 understanding of market conditions and available options' said S. Marce  
10 Fuller, President and CEO of Southern Energy Inc. 'The only way you can  
11 understand all of that fully is to be in the business of trading energy  
12 commodities.'

13 'In many cases, the fuel going into our newly acquired power plants and the  
14 electricity coming out of them are bought and sold on this floor, allowing us to  
15 make the most profitable use of our North American investments,' said Gary  
16 Morsches, president of Southern Company Energy Marketing 'We're also  
17 demonstrating we can bring the same advantages to other companies'  
18 assets.'

1       88. Duke Energy claims that "Our innovations in energy commodity trading and  
2 marketing will shape and define markets for decades to come."

3       89. Reliant also makes extensive use of a trading floor. In October 1998 Reliant,  
4 then Houston Industries, announced the creation of a "new business group, Houston  
5 Industries Wholesale Energy Group:"

6       This organization combines the power generation, natural gas transportation,  
7 and wholesale energy trading and marketing capabilities of the company.

8       Houston Industries is in position to compete across the energy chain, and  
9 capturing the value creation opportunities that exist between our businesses  
10 is a key part of our corporate strategy.

11       90. Duke Energy conducts its trading through Duke Energy Trading and  
12 Marketing, marketing co-venture of Duke Energy and Exxon-Mobil.

13       91. Dynegy carries out its trading through its own trading floor. Its customers  
14 currently have access to more than 300 energy and energy-related products, including  
15 North American power, natural gas and natural gas liquids."

16       92. Defendants Williams, Southern [Mirant], Reliant, Duke and Dynegy are also  
17 members of the Intercontinental Exchange (ICE). ICE's trading activities also go  
18 unregulated. ICE was formed by six trading companies, which created the "world's largest  
19 on-line, over-the-counter (OTC) market for energy and metals." The founding partners  
20 included Southern Company Energy Marketing, Reliant Energy, and Duke Energy,  
21 Williams Energy Marketing & Trading and Dynegy. Key partners in ICE were Goldman,  
22 Sachs, and Morgan Stanley Dean Witter.

23       93. The ICE platform has several features that support collusive behavior  
24 amongst market participants:

25       The ICE platform will be password-protected and will be accessible only by  
26 approved participants. Each participant will be required to identify those  
27 other participants that it has approved as counterparties. The approval of  
28

1 other participants as counterparties, however, as well as the standards to be  
2 applied in making such determinations (which may include credit or other  
3 considerations), will be left to each participant in its discretion. The Platform  
4 will then employ "filters" to ensure that each participant enters into  
5 transactions only with those other participants that it has approved as  
6 counterparties.

7 \* \* \*

8 The Platform will utilize an electronic trading and matching system that  
9 participants will access either through the Internet or through dedicated  
10 communication lines and that will allow participants to post bids and offers on  
11 a real-time basis. The Platform will be available on a 24-hour, 5-day per  
12 week basis (subject to maintenance requirements and prevailing market  
13 conventions).

14 94. Defendants Williams, Southern [Mirant], Reliant, Duke and Dynegy have  
15 combined to restrict trade in electricity, limit and reduce the production and sale of  
16 electricity, prevent competition in the sale of electricity, and raise the price of electricity by  
17 economic and physical withholding of electricity. A recent study of Williams, Southern  
18 [Mirant], Reliant, Duke and Dynegy shows that 98% of their electricity spot sales were  
19 based upon the exercise of market power. An August 1998 report found that the behavior  
20 of Williams, Reliant, Duke and Dynegy's use of their gas-fired power plants departed in two  
21 main ways from the competitive model. First, they almost never bid to supply their entire  
22 generating capacity. Second, they often bid capacity at prices well above \$30/MWh. In  
23 fact some firms bid some of their capacity above \$100/MWh during some hours. The  
24 authors of the report went on to conclude that at certain levels of demand and supply, a  
25 very small number of players had the ability to control price.

26 95. Another factor supporting the conclusion that the markets were being  
27 subjected to the defendants' combined efforts to restrict trade in electricity, limit or reduce  
28 the production of electricity, prevent competition in electricity and fix prices of electricity can

1 be gleaned from the lack of arbitraging amongst the markets. There have been wide  
2 variations among markets and over time. In a smoothly functioning group of markets,  
3 suppliers should have recognized that they could make significantly greater profits by  
4 selling into the markets offering higher prices.

5 96. Williams, Reliant, Duke and Dynegy are expert at arbitrage and their  
6 collective actions should have eliminated the differential profit opportunities. For example,  
7 Reliant has boasted of its arbitrage capabilities:

8 Our trading strategy emphasizes using our market information to capitalize on  
9 arbitrage opportunities as they arise."

10 97. A 1999 report provides additional proof that the electricity "markets  
11 experienced significant exercise of market power during certain periods." One practice  
12 that was used to drive up the price of electricity was to jam the electric transmission lines  
13 with electricity and then insist on a substantial payment in order to reduce generation.

14 98. Another way in which Williams, Southern [Mirant], Reliant, Duke and Dynegy  
15 were able to restrict trade in electricity, limit or reduce electricity production, prevent  
16 competition in the sale of electricity, and fix electricity prices occurred in connection with  
17 the use of critical transmission reliability information. Information about transmission and  
18 generation outage was taken to the defendants and used by them to increase their profit  
19 taking. The Mike Hardy OC/S software program was used to access this information. It  
20 provided details about the status of the transmission and generation status of the system.  
21 This practice was documented fifteen months after the data was made available. The  
22 operations person in control of the transmission reliability information, Kellan Fluckiger,  
23 admitted in a letter he wrote that "the posting of certain information" on a Web Site was  
24 providing "operation information" which was "highly market sensitive." Fluckiger went on  
25 to say that this information could be used for the "exercise of market power and gaming" in  
26 the real time electric market. Fluckiger admitted that such information allows market  
27 players to "exploit temporary locational market power that may be created by short-term  
28 transmission or generator outages on the grid." He also admitted that such information

1 could be used "to create, and then profit, from inter-zonal and intra-zonal congestion in real  
2 time."

3 99. California's public utilities have admitted that there is substantial analytical  
4 evidence that shows that high electricity prices in California are in material part the result of  
5 "market power" and "market manipulation."

6 100. The market failures of the California electric market provide proof that  
7 defendants were engaged in the unlawful conduct detailed in this complaint. The market  
8 has been subjected to excessive prices, even when demand dropped. It experienced  
9 persistent excess profits. These events took place during the time defendants Williams,  
10 Southern [Mirant], Reliant, Duke and Dynegy controlled the price setting capacity provided  
11 to them by their control of the gas-fired generation units.

12 101. Once defendants Williams, Southern [Mirant], Reliant, Duke and Dynegy took  
13 control of the power to set price in California's electric market, prices began their upward  
14 trend. In 1998, total electricity costs were about \$5.6 billion. In 1999, they increased 32%  
15 to \$7.4 billion. In 2000, they skyrocketed 278% to \$28 billion; and they are expected to  
16 increase to \$70 billion in 2001.

17 102. Williams, Southern [Mirant], Duke and Dynegy's financial performance reports  
18 prove show they have and are taking billions of dollars from California as a result of the  
19 elevated prices being charged in California. On 18 January 2001, Duke Energy reported a  
20 \$744 million profit, a 374% increase from 1999. The next day, on 19 January 2001,  
21 Southern Company announced a \$1.40 billion profit.

22 103. Four days later, on 23 January 2001 Dynegy announced net income of \$452  
23 million, a 210 percent increase over 1999. Two days after Dynegy reported its results,  
24 Reliant Energy reported \$838 million in adjusted earnings, a 64% increase.

25 104. On 5 February 2001, Williams reported \$873.2 million in profits, a 390  
26 percent increase from 1999. Profits from Williams Energy Services, which houses  
27 Williams' merchant power operations, were \$1.5 billion, a 194% improvement from 1999.  
28

1        105. Each of the defendants have reported substantial increases in profits for the  
2 first quarter of 2001. Williams reported \$274 million in earnings, compared to \$134 million  
3 in the 1<sup>st</sup> Quarter of 2000. Southern Energy [Mirant] reported profits of \$320 million,  
4 compared with \$237 million in the 1<sup>st</sup> Quarter of 2000. Reliant Energy reported profits of  
5 \$274 million for the 1<sup>st</sup> Quarter of 2001, compared to \$134 million for the same period in  
6 2000. Duke reported 1<sup>st</sup> Quarter profits of \$428 million, a 208% increase over their 1<sup>st</sup>  
7 Quarter 2000. Dynegy reported 1<sup>st</sup> Quarter profits of \$137.5 million, compared to \$79.4  
8 million for their 1<sup>st</sup> Quarter 2000.

9        106. In carrying out their unlawful, fraudulent, and unfair actions, the defendants  
10 have concealed their wrongdoing. They possess information unavailable to plaintiffs  
11 without discovery.

12        107. These defendants had and have a sufficient profit motive to collude, the  
13 means to reach and enforce their collusive agreements; and the subject matter of their  
14 combination, electricity generation and sales in California, has a high inelasticity of  
15 demand.

16        108. There is close similarity in production costs across the five defendants core  
17 companies. The five defendant firms were able to reach a consensus on price, they are  
18 able to observe and compare each other's prices. They can detect and punish cheating on  
19 by any of the five that lowers prices. Not one of the five firms have lowered prices.  
20 Individually and collectively, they possess market power. Each has acted in combination  
21 and individually to exercise significant market power which is in direct conflict with the  
22 policy of the State of California against the exercise of significant market power in the  
23 California electricity market.

24        109. The combination amongst these firms is supported by a long history of  
25 interaction between them and the individual defendants. The executive defendants  
26 regularly meet and confer at conferences, in connection with multi-client reports, and  
27 otherwise. This past and on-going contact has made it possible for the defendants to  
28 communicate indirectly and to reach tacit understandings.



1        110. There are substantial avenues of communications amongst the firms. They  
2 are wired together through their trading floors. Price and related information is exchanged  
3 amongst the firms on a real time basis by phone, fax, wire, computer and otherwise.

4        111. These defendants price electricity interdependently and in parallel with one  
5 another. The defendants' decisions are interdependent in the sense that the perceived  
6 profitability of each defendant's pricing and output choices depends on its estimate of how  
7 the other four defendants will respond to any of its pricing or output decisions. As set forth  
8 above, these defendants took actions in furtherance of their agreements to restrict trade in  
9 electricity, limit or reduce production of electric generation, prevent competition in the sale  
10 of electricity, and fix electricity prices in a manner that worked against their short-term  
11 economic self-interest.

12        112. The defendants had a motive to act in concert because they would not have  
13 been able to achieve their unprecedented profits which; would not have flowed to them  
14 absent their unlawful combination and unlawful, fraudulent, and unfair business practices  
15 and acts.

16        113. Plaintiffs seek to recover the damages caused by the defendants' antitrust  
17 and unlawful, fraudulent, and unfair business practices. Unless enjoined from future  
18 antitrust, unlawful, fraudulent, and unfair business practices, the State of California faces  
19 the clear and present risk of a financial recession. Each megawatt-hour of electricity that  
20 goes undelivered represents about \$16,000 of lost economic output in California. The  
21 March 19-20 blackout costs the State of California, which involved the loss of several  
22 thousand megawatts, reduced state output by \$75 million to \$100 million.

23        114. The State of California has been required to expend more than \$6 billion  
24 during the emergency to buy electricity, a material portion of which was at inflated prices  
25 caused by the defendants antitrust and unlawful, fraudulent, and unfair business practices.  
26 There is a substantial danger that unless the defendants' antitrust violations, and their  
27 unlawful, fraudulent, and unfair business practices are enjoined, the State of California will  
28 be paying \$150 million per day for electricity.

115. The DWR has determined that the California electricity market is not reasonably competitive. DWR has documented that in the California electricity market sellers know that all bids will be accepted because there is no surplus of suppliers to meet demand. DWR has concluded that economic theory holding that bidders might be constrained to bid their marginal price of energy production has nothing to do with reality. DWR has determined that nothing constrains supply bidding in the market in which DWR buys electricity.

116. The State of California will be required to waste billions of additional dollars of public funds in order to finance the on-going illegal sales of electricity to the State of California. The State of California is being forced to issue billions of dollars of unplanned bonds and to take out billions of dollars of bridge loans in order to pay for the costs of buying electricity under unlawful conditions.

**FIRST CAUSE OF ACTION**

(Violation of California Antitrust Law,

Business & Professions Code §§16720, et seq. (The Cartwright Act)

(Conspiracy to Fix Prices and Restrain Supply)

117. Plaintiffs reallege and incorporate by reference herein, as though set forth in full, the allegations in the preceding paragraphs. These claims are brought on behalf of the general public of the State of California.

118. At all relevant times, defendants and their co-conspirators illegally combined to fix the price for electricity in the California electricity market, and to restrain the supply of electricity in the California electricity market in violation of the Cartwright Act (California Business & Professions Code §§16720, et seq.).

119. As a result of this violation, and the acts of others in passing on these overcharges, the general public has been injured in its business and property, in an amount which will be established at the trial of this action. As a result of their unlawful conduct described above, defendants have been and will be unjustly enriched.

1 Specifically, defendants have been unjustly enriched by the receipt of hundreds of millions  
2 of dollars in ill-gotten gains from the sales of energy in a market manipulated by these  
3 defendants.

4 120. Wherefore, plaintiffs pray for judgment and relief against defendants as set  
5 forth in the Prayer for Relief.

6 **SECOND CAUSE OF ACTION**

7 (Unlawful and Fraudulent Business Acts or Practices in

8 Violation of Business & Professions Code §§17200, et seq.)

9 121. Plaintiffs reallege and incorporate by reference herein as though set forth in  
10 full the allegations in the preceding paragraphs. These claims are brought on behalf of the  
11 general public.

12 122. Business & Professions Code §17203 prohibits the commission of any  
13 "unlawful, unfair or fraudulent business act or practice."

14 123. Defendants' violation of the Cartwright Act, Business & Professions Code §  
15 16720, by engaging in acts and practices which constitute anti-competitive practices, also  
16 violates Business & Professions Code § 17200's proscription against engaging in unlawful,  
17 fraudulent, and unfair business acts and practices.

18 124. Plaintiffs, pursuant to California Business and Professions Code §17203,  
19 seek an order of this Court compelling defendants to:  
20

21 (a) Provide restitution to the public for all funds unlawfully, unfairly or fraudulently  
22 obtained by defendants as a result of their violation of California Business  
23 and Professions Code sections 17200, et seq.; and,

24 (b) Disgorge all revenues and profits acquired as a result of the unlawful  
25 business acts or practices.

26 125. Wherefore, plaintiffs pray for judgment and relief against defendants as set  
27 forth in the Prayer for Relief.  
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs pray for judgment and relief against defendants, jointly and  
3 severally, as follows:

4 1. For injunctive and declaratory relief:

5 A. Declaring that defendants have violated the provisions of California  
6 Business and Professions Code §17200, California Business and  
7 Professions Code §17500; and California Business and Professions  
8 Code § 16726;

9 B. Enjoining defendants and their respective successors, agents,  
10 servants, officers, directors, employees and all persons acting in  
11 concert with them, directly or indirectly, from engaging in conduct  
12 violative of California Business and Professions Code §§ 17500 and  
13 16726;

14 C. Requiring defendants to disgorge all profits acquired by means of any  
15 act or practice by this court to be an unlawful, unfair or deceptive  
16 business practice;

17 D. Requiring defendants to disgorge all monies wrongfully obtained and  
18 all revenues and profits derived by defendants as a result of their acts  
19 or practices as alleged in this complaint;

20 E. Requiring defendants to pay restitution to restore to the general public  
21 all funds acquired by means of any act or practice declared by this  
22 court to be an unlawful or unfair business act or practice;

23 F. Awarding Plaintiffs reasonable attorneys' fees and costs;

24 2. Awarding civil fines as allowed by law;

25 3. Awarding pre- and post-judgment interest;

26 4. Awarding actual and treble damages; and,

27 5. That the Court grant such other and further relief as may be just and proper.  
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**JURY DEMAND**

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: May 1, 2001

KIESEL, BOUCHER & LARSON, LLP  
and AGUIRRE & MEYER

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